



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

APPELLANT'S REPLY BRIEF

APPELLANT: Christer STRÖM CONFIRMATION NO. 8832
SERIAL NO.: 09/922,504 GROUP ART UNIT: 3761
FILED: August 3, 2001 EXAMINER: Michael G. Mendoza
TITLE: "VENTILATOR"

MAIL STOP APPEAL BRIEF-PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

S I R:

Appellant herewith submits his Reply Brief in response to the Examiner's Answer dated September 22, 2004. Appellant will respond to the section in the Examiner's Answer designated as Response To Argument (meaning the Examiner's response to Appellant's Argument).

The Examiner questioned the statements in Appellant's Main Brief regarding the valve 228, the Examiner stating that it is the expiratory valve 143 that is involved in controlling the pulses of the oscillation frequency. Appellant acknowledges that the valve 143 is referred in the Bird reference as an "expiratory metering valve" (see, for example, the paragraph beginning at column 9, line 41), however, this valve, like the valve 228, is in no manner "controlled" but is simply a check valve (i.e. a one-way valve) that opens or closes to a certain degree, without any control signal being supplied thereto.

Although this opening and closing does have an influence on the oscillation frequency, it has nothing to do with participating in a recruitment phase (since no recruitment phase is disclosed at all in the Bird reference), and it does not cause a plurality of breaths to be superimposed on an elevated basic pressure, nor does it produce an increased breathing rate with no withdrawal of the breathing gas, as required in claim 1 on appeal. Most importantly, however, whatever function the valve 143 performs in the Bird reference, it is not "controlled" to perform that function, but merely opens to a certain degree, or remains completely closed, based on its structure as a check valve.

The reason why valve 228 was mentioned in Appellant's Brief is because it is that valve that is specifically referred to in the Bird reference as being the "exhalation valve" (see the paragraph bridging columns 21 and 22 of the Bird reference). As noted above, even though the valve 143 happens to be designated as an "expiratory metering valve" this does not "convert" that valve in to a true exhalation valve.

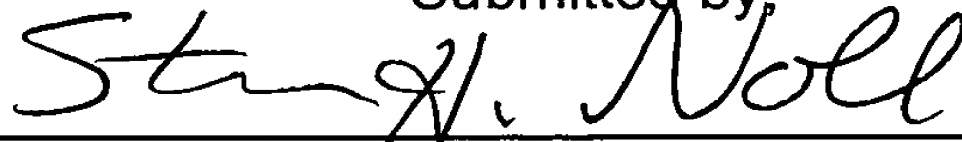
Moreover, to the extent that the Examiner is relying on Figures 24 and 32, reproduced at page 4 of the Examiner's Answer, as having any relationship to the operation of the expiratory valve 143, Appellant respectfully submits this conclusion is mistaken. In column 6 of the Bird reference, Figure 24 is stated to be a graph showing the performance of the ventilator shown in Figures 22 and 23. Figures 22 and 23, however, are a completely different embodiment from the embodiment shown in Figure 1, which is the embodiment that includes the expiratory valve 143. The expiratory valve 143 is not even shown in the pneumatic diagram of Figure 23.

Similarly, column 6 of the Bird reference states that Figure 32 is among the figures that are graphs showing the performance of the ventilator shown in Figure 25. Again, the ventilator shown in Figure 25 of the Bird reference, the pneumatic circuitry for which is shown in Figure 26, is a completely different embodiment from the embodiment of Figure 1. The pneumatic circuit shown in Figure 26, that produces the curve shown in Figure 32, does not even involve the expiratory valve 143, since the expiratory valve 143 is not present in that embodiment.

Appellant therefore finds no correlation whatsoever between any operation or function of the valve 143 in the Bird reference and the wave forms reproduced by the Examiner at page 4 of the Examiner's Answer.

For the above reasons and the reasons expressed in Appellant's Main Brief, Appellant respectfully submits the claims on appeal are patentable over the teachings of the Bird reference, and reversal of the rejections based on the Bird reference is respectfully requested.

Submitted by,

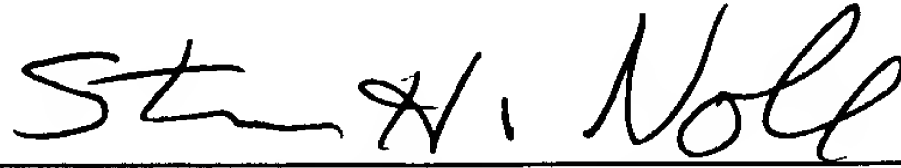


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CERTIFICATE OF MAILING

I hereby certify that an original and two copies of this correspondence are being deposited with the United States Postal Service as First Class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on November 17, 2004.

A handwritten signature in black ink, reading "Steven H. Noll", is written over a horizontal line.

STEVEN H. NOLL

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